

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 118

Call to Order: By **SEN. LORENTS GROSFIELD**, on April 10, 2001 at 1:16 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman
Sen. Vicki Cocchiarella
Sen. William Crismore
Rep. Jeff Laszloffy, Vice Chairman
Rep. Gilda Clancy
Rep. Larry Cyr

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell
Jan Brown, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Senate Amendments to HB 118,
4/9/2001

Executive Action: Senate Amendments to HB 118

{Tape : 1; Side : A; Approx. Time Counter : 0.5 - 8.5}

Chairman Grosfield called the meeting to order. **Sen. Cocchiarella** asked **Rep. Clancy** what the purpose of this bill was, and why it was necessary to do something different with the small business ombudsman. **Rep. Clancy** said the bill was a request from the Dept. of Environmental Quality as a result of a legislative audit. The ombudsman was originally stationed in the Dept. of Commerce, and through the course of time, somehow moved over to DEQ, and they're seeking legislative determination as to whether or not they can stay in DEQ. **Rep. Cocchiarella** asked **Louise Moore** of DEQ

to comment. **Ms. Moore** said the position was in Commerce in 1975 and 1976, physically located there but always had business cards with DEQ and its predecessor, DHES. At the time that all the agencies were reorganized and natural resources programs were put together, it was decided that the position fit best within the Pollution Prevention Bureau of DEQ. That's pretty consistent with what's being done in other states as well, so the position was moved there in 1996. They missed the fact that they needed to come back in and ask for that position to be located outside of the regulatory programs of DEQ. The issue was that they didn't want this person so closely tied to the regulatory programs that it looked like a regulatory position, because it's not. It's been there for four years; it's working well. They realized they were in error by not having that legislation cleaned up, and they felt the best move would be to clean it up. They also asked their compliance advisory council about it, and asked their small business representatives if it fits best and is working in DEQ or if it should be moved back. Their response was that they liked it where it was and felt it worked more effectively in DEQ.

Sen. Cocchiarella asked **Rep. Clancy** what the purpose was of the stricken language on page 2, lines 16-20. **Rep. Clancy** said it was brought by the Nat. Federation of Independent Business and she agreed with it. They wanted an assurance that if this ombudsman did stay in DEQ, the information that they gathered by working with small businesses regarding air quality standards wasn't turned back over to DEQ in the regulatory part for purposes of finding. The ombudsman is simply a position where they work on a friendly basis with these small businesses to bring them into compliance with the Air Quality Act.

Sen. Cocchiarella said that when she, Sen. Grosfield and Sen. Crismore had served on the Environmental Quality Council, they had gone through a process of analyzing every agency for compliance and enforcement issues and were very impressed with this position and what that person did. She and Sen. Grosfield had talked about this and tend to think that that position has worked very well at helping small businesses. Neither of them are aware or have heard of complaints about the operation of that entity, so they are concerned about how to make this work, and why NFIB has a problem. **Rep. Clancy** said she didn't believe that they thought they had a problem. They just wanted language in place that assured them that this wouldn't happen.

Rep. Laszloffy said it was the feeling of the House Natural Resources Committee when they put this amendment in there, that the ombudsman is supposed to be a neutral party, and to maintain that neutrality and the appearance of that neutrality, that's the reason they were originally located outside DEQ. If they're

actually going to be moved physically back into the department, there needs to be a mechanism in place where the small businesses that come voluntarily to the ombudsman for help know that they are dealing with a neutral third party and not simply with an employee of the department. That's the reason that language was put in there. It was the opinion of the House Natural Resources Committee that they would be willing to allow the ombudsman to move physically back in, and he realizes they are there now, but to physically be located within the DEQ as long as there was some language in there that specifically addressed the neutral third party position. He did some checking up on this prior to executive action on the bill and found out that it really is working well, so they didn't have a problem with that. It is the strong opinion of the House Natural Resources Committee that they'd like it to stay, realizing that the bill does need to go forward so the problem can be corrected.

Rep. Clancy said that DEQ did agree to the amendment and had no problem with it. **Sen. Grosfield** said he couldn't remember why they struck the amendment. It was struck on the Senate floor. **Ms. Moore** said in doing the amendment and working with NFIB, they were careful about the language that they put in, and the advisory council had agreed to it. They didn't suggest an amendment to the title, and so it was considered flawed because they hadn't actually amended the title, so what's before the committee today is an amendment to the title. It was a procedural error that needed to be addressed.

Sen. Grosfield said if he remembered correctly, it was before the Senate on second reading on the last day, and they pulled the amendment off rather than pass consideration, which would have killed the bill.

{Tape : 1; Side : A; Approx. Time Counter : 8.5 - 11}

Motion: Rep. Clancy moved to amend HB 118 to amend the title and reinsert the stricken language (amendment number HB011802.alm).

Discussion: Mr. Mitchell distributed copies of the amendment and said that the language in amendment number two is word for word the way it was, and the title is adjusted in amendment number one. **Sen. Grosfield** asked if this was outside the amendment since this is a conference committee rather than a free conference committee. **Mr. Mitchell** said he didn't think so since the only change is correcting the title, and the purpose of the title is just to provide notice as to what is in the bill. **Sen. Grosfield** asked if there were any other issues in committee or on the floor that should be addressed. **Sen. Cocchiarella** said they had struggled to get the right language. **Sen. Grosfield** said subject

to Article II, section 9, he thinks just to make it clear that if there was a regulator within the department, or let's say the department director, who went to the ombudsman and said hey, what's the deal here, it puts that person in a real tough situation, and the director or the regulator is a member of the public as well as anybody else, so they could go in. He thinks all these records are open; it's just a question if anybody ever shows up to ask for them. **Sen. Crismore** said he had no problem with the amendments. **Sen. Cocchiarella** said she is fine with them.

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Motion/Vote: Rep. Clancy moved that the amendments (HB011802.alm) to HB 118 do pass. Motion carried 6-0.

Motion/Vote: Sen. Cocchiarella moved to concur in the bill as amended. Motion carried 6-0.

Motion/Vote: Sen. Cocchiarella moved to adopt the conference committee report. Motion carried 6-0.

ADJOURNMENT

Adjournment: 1:29 P.M.

Sen. Lorents Grosfield, Chairman

Jan Brown, Secretary

LG/JB

EXHIBIT (cch81hb0118aad)